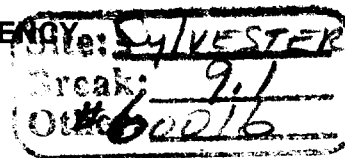




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
ONE CONGRESS STREET SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023



Memorandum

Date: November 10, 2003

Subj: Disposition of Property from
The Sylvester (Gilson Road) Superfund Site

From: Beth A.M. Termini
Office of Environmental Stewardship

Darryl Luce
New Hampshire & Rhode Island Superfund Section, R&R I, OSRR

To: Michael Jasinski
Chief, New Hampshire & Rhode Island Superfund Section, R&R I, OSRR

We recommend that you sign the attached letter authorizing the retention by NHDES of personal and real property from the Sylvester Superfund Site in Nashua, NH (the "Site"). There would be no reimbursement made to the Hazardous Substance Superfund. For the reasons set forth below, the retention is consistent with the relevant regulations governing transfer and disposal options for Superfund property and equipment under a State Cooperative Agreement, 40 CFR. Part 35, Subpart O¹, and CERCLA.

FACTUAL BACKGROUND

EPA and NHDES entered into a State Cooperative Agreement on August 24, 1981 (#V001703-01-P), related to the remediation of the Site. The implementation of the remedy is essentially complete, with ongoing monitoring and institutional controls in place. EPA and NHDES agreed to decommission the groundwater treatment plant at the Site, based upon a remedial action assessment conducted after termination of the treatment system operation. The groundwater treatment plant decommissioning was completed in August 2001. EPA issued an Explanation of Significant Differences (ESD) on September 23, 2002, to document an adjustment to the cleanup levels for two constituents (copy attached). The remedial action at the Site has been fully implemented; monitoring continues and institutional controls are in place.

¹We have been advised by EPA headquarters that the regulations at issue were not in effect at the time of 1981 State Cooperative Agreement. However, we are relying on these regulations for guidance in this particular matter.

NHDES has requested property disposition instructions from EPA New England with respect to the Site. In letters to the Region dated May 7, 2001 and December 13, 2001, NHDES outlined its request regarding the disposition of Site property, the property inventory, summary of expenses related to past and ongoing Site Operation and Maintenance, property and equipment disposal, and information regarding the decommissioning of the groundwater treatment system at the Site. More recently, NHDES contacted EPA to notify us of their desire to have the former pump and treat building transferred to the City of Nashua. This is a 14,400 sq. ft. pre-engineered steel building which is fixed in-place equipment, not a structural improvement.

Title in personal property purchased with Superfund money vests in the State upon receipt (40 CFR §35.6325 (b))², unless EPA wants the State to transfer title to EPA (which we do not in this case, because there is no need for the property). EPA does retain an interest in CERCLA-funded personal property for the percentage of EPA's participation in the total award (40 CFR §35.6325 (a)), thereby requiring reimbursement of the Superfund upon disposition of the property (40 CFR §35.6345 (b) and (c)). However, a distinction is made for fixed in-place equipment (e.g. the pump and treat building and related fixed equipment) in which EPA retains **no** interest (40 CFR §35.6325(b)(2)) and is therefore not subject to the reimbursement requirements. Moreover, there are exceptions to the general requirement for reimbursement based upon the value of the property at issue (40 CFR §35.6340(a)(2)(i)(B) and (b)(2)).

NHDES first inventoried all equipment and supplies remaining at the Site. NHDES then identified equipment for reuse by EPA. A notice was sent to all RPMs regionally and nationally to see if there was a need at another site for the equipment. As a result, some of the equipment was moved to another site. The remaining equipment and supplies are not needed by EPA. NHDES has submitted to EPA an inventory and analysis of property disposition alternatives for the equipment and supplies remaining at the Site, as required by 40 CFR §35.6340. If the equipment has no residual fair market value, and if the residual value of the supplies is less than \$5,000, then there is no requirement for the State to reimburse the Superfund for either equipment or supplies (40 CFR §35.6340(a)(2)(i)(B) and (b)(2)).

Although the State offered all of the equipment and supplies for sale through advertised public bid offerings in local, regional and national publications, it received no response or offers. NHDES then identified equipment and supplies that it would be able to reuse or that other state offices could use. After taking into account the cost of disposing of all equipment and supplies the state will not be able to use(approx. \$250,000), and the value of the equipment and supplies the state will retain (approx. \$124,000, which includes, in part, fixed in-place equipment in which EPA has no interest, and is therefore a conservative calculation), there is no residual fair market value

²We have been advised by EPA headquarters that the regulations at issue were not in effect at the time of 1981 State Cooperative Agreement. However, we are relying on these regulations for guidance in this particular matter.

for which the Hazardous Substance Superfund can be reimbursed. EPA has no objection to the disposition of equipment and supplies as outlined by NHDES.

The State has additionally requested EPA's confirmation that: the State can transfer a portion of state-owned real property associated with the Site (parcel containing the former pump and treat building), and that it can retain title to the remaining portion of the state-owned real property associated with the Site (parcels fronting Gilson Rd.) for potential transfer at a later date.

Under the relevant regulations, a state is required to retain title to real property acquired under a cooperative agreement in order to conduct a response action (40 CFR 35.6400(a)(1)) and, if Superfund funds are used to purchase the property, must reimburse the Superfund if the property is sold. If the state transfers such real property, and if the transfer is accomplished with no net gain, there would be no requirement to reimburse the Superfund. (35 CFR §35.6405 and 40 CFR §31.31)

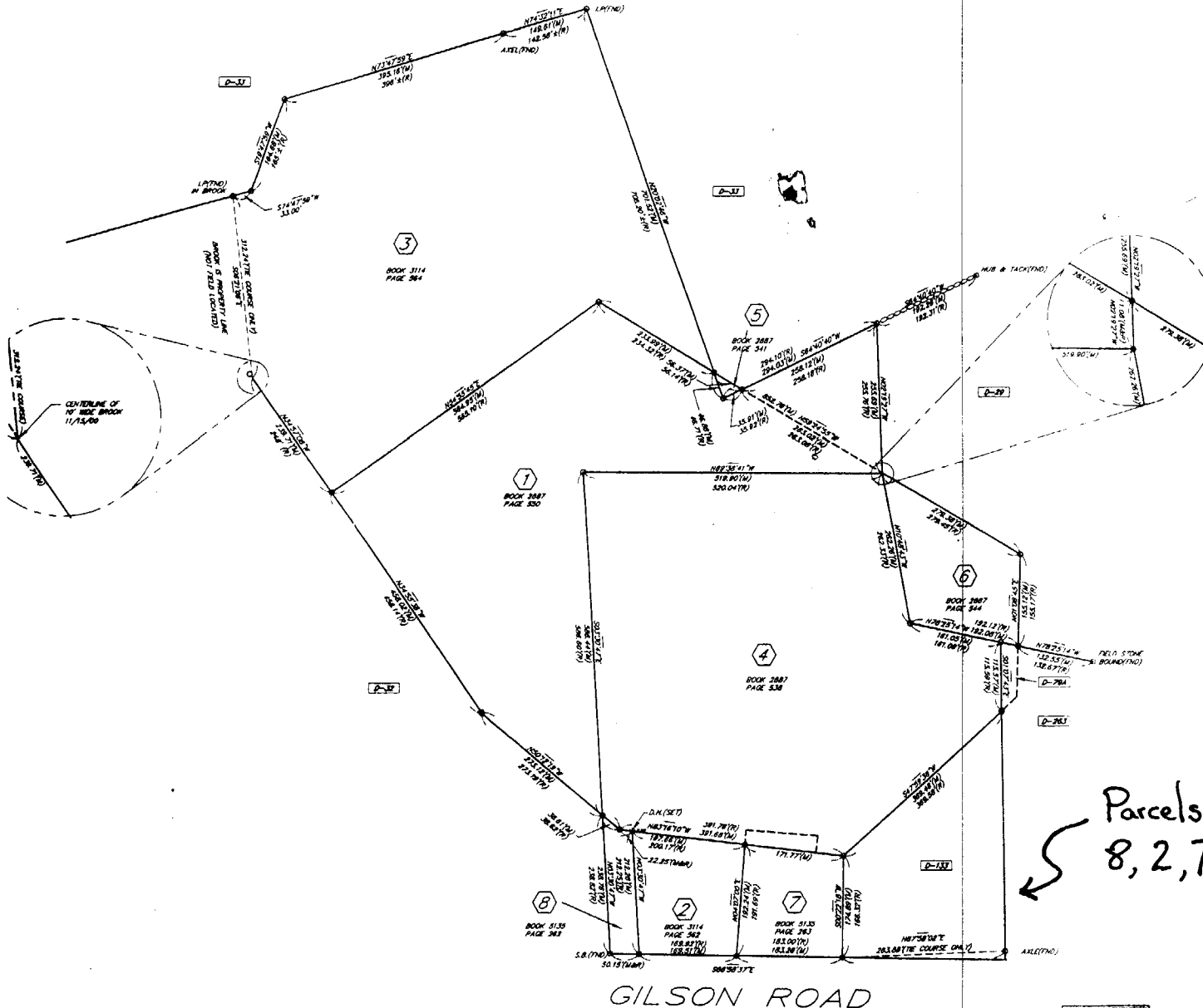
With respect to the reimbursement issue, the State informed us that it obtained all of the state-owned real property associated with the Site through eminent domain and not by using CERCLA funds. Therefore, there would be no requirement to reimburse the Superfund with respect to disposition of any portion of the state-owned real property.

With respect to the question of whether the state-owned real property continues to be needed in order to conduct a response action, the State also informed us that it intends to transfer the former pump and treat building at the Site to the City of Nashua. This planned use appears to be consistent with the institutional controls in place at the Site and EPA has no objection to this planned transfer. The State will need to continue to enforce compliance with the existing institutional controls on the property and ensure that those institutional controls are maintained. Should the state plan to transfer any additional parcels, we would anticipate further discussions.

As to the remainder of the state-owned property, management of the Site cover and ground water monitoring will be maintained as outlined in the 1982 ROD, 1983 Supplemental ROD, and 1990 and 2002 ESDs for the Site. Because the response action continues to be conducted on this portion of the state-owned property, we believe that it would be premature to provide disposition instructions. EPA anticipates that the State will continue to hold title to this portion of the Site and will advise us of any plans to transfer additional portions of the Site property in the future.

APPROVAL OF STATE'S DISPOSITION PLAN

NHDES has requested EPA's concurrence on its planned approach for property disposition at the Site. We recommend that you sign the attached letter, concurring on the state's approach whereby it would retain all property without the need to reimburse the Superfund. If you have any questions about this matter, please call Beth Termini at 918-1662 or Darryl Luce at 918-1336.



PLAN REFERENCES:

1. N.H. WATER SUPPLY & POLLUTION CONTROL COMMISSION ADJUDICATION PLAN ROAD NASHUA SUPERFUND SITE, NASHUA, N.H., SCALE 1"=100' AND BEING PLACED AT THE HILLSBOROUGH COUNTY RECORDS OF DEEDS.
2. SUBDIVISION & CONSOLIDATION PLAN, NASHUA, N.H., REFINISHED FOR DEED HOME PARK, DATED SEPTEMBER 24, 1990 BY ALLAN B. SPENCER, INC. AS AS PLAN 107/13 AT THE HILLSBOROUGH COUNTY RECORDS OF DEEDS.
3. PLAN FOR BOUNDARY LINE AGREEMENT BETWEEN LANDS OF A & B & C, NASHUA, N.H., DATED SEPTEMBER 24, 1990 BY ALLAN B. SPENCER, INC. AS AS PLAN 107/13 AT THE HILLSBOROUGH COUNTY RECORDS OF DEEDS.
4. SUBDIVISION OF THE PROPERTY OF MARY M. CHAMBERLAIN, NASHUA, N.H., DATED SEPTEMBER 24, 1990 BY ALLAN B. SPENCER, INC. AS AS PLAN 107/13 AT THE HILLSBOROUGH COUNTY RECORDS OF DEEDS.

NOTES:

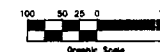
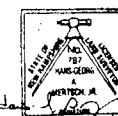
- 4. SHOWS TRACT NUMBER
- = IRON PIN BEAD SET UNLESS LABELED OTHERWISE
- TALL STAKES HAVE BEEN SET ALONG TRACT LINES IN AREAS WHERE IT IS NOT POSSIBLE TO SEE BETWEEN CORNERS
- (N) = RECORD DIMENSION
- (M) = MEASURED DIMENSION
- D-31. D-32. D-33. D-34. D-35. D-36. D-37. D-38. D-39. D-40. D-41. D-42. D-43. D-44. D-45. D-46. D-47. D-48. D-49. D-50. D-51. D-52. D-53. D-54. D-55. D-56. D-57. D-58. D-59. D-60. D-61. D-62. D-63. D-64. D-65. D-66. D-67. D-68. D-69. D-70. D-71. D-72. D-73. D-74. D-75. D-76. D-77. D-78. D-79. D-80. D-81. D-82. D-83. D-84. D-85. D-86. D-87. D-88. D-89. D-90. D-91. D-92. D-93. D-94. D-95. D-96. D-97. D-98. D-99. D-100.
- SITE FEATURES AND IMPROVEMENTS NOT LOCATED OR SHOWN

Parcels to be conveyed:
8, 2, 7 & southern half of D-133.

BOUNDARY WORKSHEET
GILSON ROAD SUPERFUND SITE
GILSON ROAD
NASHUA, NEW HAMPSHIRE
SCALE: 1"=100' DECEMBER 1, 200

TFM TERRY F. MERRILL Surveyor 1000 North Main Street Nashua, NH 03063 Phone: (603) 882-1111 Fax: (603) 882-1112	40 Constitution State Bedford, NH 03110 Phone: (603) 424-0000 Fax: (603) 424-0001
	Bedford, NH • Manchester, NH • Keene, NH • Salem, NH • And
16867.00	D CHART
16867.00	D CHART
16867.00	D CHART

DESCRIPTION	DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY *Sylvester*
REGION 1
1 Congress Street, Suite 1100
BOSTON, MA 02114-2023 *9.1*
60065

November 10, 2003

Carl Baxter, P.E.
Administrator, Hazardous Waste Remediation Bureau
New Hampshire Department of Environmental Services
P.O. Box 95, 29 Hazen Drive
Concord, NH 03302-0095

Re: Decommissioning of ground water treatment plant and
property disposition - Sylvester Site.

Dear Mr. Baxter:

The EPA has reviewed your letters of May 7, 2001 and December 13, 2001, and the supporting documentation and concurs with the disposition of equipment, supplies, building and the portion of the real property to be transferred to the Town of Nashua as outlined in your letters. The State's request with respect to such personal and real property is consistent with the relevant regulations governing transfer and disposal options for Superfund property under a State Cooperative Agreement, 40 CFR Part 35, Subpart O, and CERCLA. EPA and NHDES entered into a State Cooperative Agreement on August 24, 1981 (#V001703-01-P), related to the remediation of the Site. As described below, there is no need for reimbursement to be made to the Hazardous Substance Superfund.

Title in personal property purchased with Superfund money vests in the State upon receipt (40 CFR §35.6325 (b))¹, unless EPA wants the State to transfer title to EPA (which we do not in this case). EPA does retain an interest in CERCLA-funded personal property for the percentage of EPA's participation in the total award (40 CFR §35.6325 (a)), thereby requiring reimbursement of the Superfund upon disposition of the property (40 CFR §35.6345 (b) and (c)). However, a distinction is made for fixed in-place equipment (e.g. the pump and treat building and related fixed equipment) in which EPA retains **no** interest (40 CFR §35.6325(b)(2)) and is therefore not subject to the

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reimbursement requirements. Moreover, there are exceptions to the general requirement for reimbursement based upon the value of the property at issue. (40 CFR §35.6340(a)(2)(i)(B) and (b)(2))

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The State has additionally requested EPA's confirmation that: the State can transfer a portion of state-owned real property associated with the Site (parcel containing the former pump and treat building), and that it can retain title to the remaining portion of the state-owned real property associated with the Site (parcels fronting Gilson Rd.) for potential transfer at a later date.

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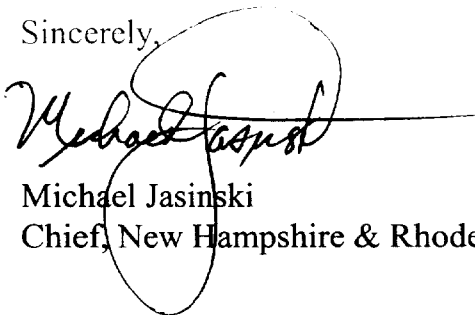
domain and not by using CERCLA funds. Therefore, there would be no requirement to reimburse the Superfund with respect to disposition of any portion of the state-owned real property.

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We hope that this letter responds to your concerns. The State-EPA relationship at the Sylvester Site has proved to be an effective partnership and the Agency looks forward to continued cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Jasinski", is written over a horizontal line. The signature is stylized with a large, looping initial "M".

Michael Jasinski
Chief, New Hampshire & Rhode Island Superfund Section, OSRR